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7 Attorney for Defendant
8 EDWIN ALVARADO AMAYA

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

13 Petitioner,

14 v.

15 EDWIN ALVARADO AMAYA,

16 Defendant.

Case No. 19-0280 RS

DEFENDANT EDWIN AMAYA'S
MEMORANDUM RE: SENTENCING

17 Defendant EDWIN ALVARADO AMAYA, by and through his attorney of
18 record, Peter L. Arian, respectfully requests that the Court to adopt the joint
19 recommendation of the parties and that of probation in determining his sentence: a
20 prison term of 300 months. Mr. Amaya submits that twenty-five years of prison meets
21 the overriding statutory directive of 18 U.S.C. § 3553(a): a sentence that is sufficient,
22 but not greater than necessary to meet the goals of sentencing.

23 Respectfully submitted,

24 DATED: February 14, 2023

25 By /s/ Peter L. Arian

26 PETER L. ARIAN

27 Attorney for Defendant EDWIN AMAYA

28 *U.S.A. v. Edwin Amaya*, 19-cr-280-RS
Defendant's Memorandum Re: Sentencing

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II. THERE ARE NO OBJECTIONS TO THE PSR

After the proceedings mandated by Fed. R. Crim. P. 32, there are no outstanding objections to the probation report. This includes the advisory guidelines calculation set forth in the report.

III. SECTION 3553(A) ANALYSIS

A. Background and Characteristics

The facts of Mr. Amaya's upbringing and circumstances are well established by the PSR at ¶¶ 95-100. He was raised in poverty and instability in El Salvador. Mr. Amaya's mother lived abroad and his father was a drunk who frequently left home on extended drinking binges. PSR ¶ 96. As a result, Mr. Amaya was hanging out on the streets smoking dope by age nine. *Id.* The poverty of rural El Salvador cannot be understated: Mr. Amaya's family was on the lowest rung of society selling fish, tortillas, and sugar cane to get by. PSR ¶ 97.

When he came to the United States in 2015, Mr. Amaya was just seventeen years old. PSR ¶ 99. Mr. Amaya suffered housing instability for most of the time that he was in the United States. PSR ¶ 94 (before his incarceration Mr. Amaya was "living in the street, in hotels or with friends.). When arrested in the instant case, Mr. Amaya reported to police that he was essentially living in a tent on Folsom street.

Mr. Amaya's troubles with mental health are also well documented by the PSR. In 2018, he was diagnosed with "depression, PTSD and borderline intellectual functioning." PSR ¶ 104. The PSR quoted a 2018 psychologist's report which found that Mr. Amaya's "deficits in cognitive abilities can affect his judgment, ability to process and cope with difficulties, and make him more vulnerable to other people's influence." PSR ¶ 105.

B. Mr. Amaya was 20 Years old When He Committed These Crimes

In addition to Mr. Amaya's difficult childhood, adolescence, and young adulthood, as well as his difficulties with mental health, the Court should also consider

1 the fact of his age at the time that these crimes were committed. While he is not a child
2 under the law (arguably a manufactured legal distinction) Mr. Amaya was exceedingly
3 young at the time of the offense. He had little, if any, stability that the average child
4 enjoys. As stated above, he suffered the absence of his parents as a child, began using
5 drugs at nine, and is mentally ill. He has a sixth-grade education. PSR ¶ 109. He was
6 homeless from at least the age of eighteen to the time of his arrest at twenty. In short,
7 Mr. Amaya did not have the same opportunities most people get to learn maturity,
8 through experiences such as caring homes, loving parents, and adequate schooling.
9 This is someone who's maturity and development was limited by his circumstances.
10 Though he is an adult on paper, it is doubtful that Mr. Amaya was anything more than a
11 child at the time of these offenses.

12 The law recognizes that “[c]hildren are constitutionally different from adults for
13 the purpose of sentencing.” *Miller v. Alabama*, 132 S. Ct. 2455, 2464 (2012). The law
14 also recognizes that serious offenses committed by juveniles should be treated
15 differently than offenses committed by adults. *See Graham v. Florida*, 560 U.S. 48, 68
16 (“developments in psychology and brain science continue to show fundamental
17 differences between juvenile and adult minds. For example, parts of the brain involved
18 in behavior control continue to mature through late adolescence.”). *Graham* instruct us
19 that “[j]uveniles are more capable of change than are adults, and their actions are less
20 likely to be evidence of ‘irretrievably depraved moral character’ than are the actions of
21 adults. It remains true that ‘from a moral standpoint it would be misguided to equate
22 the failings of a minor with those of an adult, for a greater possibility exists that a
23 minor's character deficiencies will be reformed.” *Id.* at 68, quoting *Roper v. Simmons*
24 543 U.S. 551, 570 (2004).

25 While these cases are not directly applicable to Mr. Amaya because he was
26 twenty at the time of the offenses, they do support the sentence proposed by the parties
27

1 (a two year variance from the low-end of the guidelines) because he was so young at
2 the time of his crimes.

3 **C. Deterrence and Concerns for Public Safety are Mitigated by the Fact**
4 **that Mr. Amaya Will Ultimately be Deported**

5 Mr. Amaya is an alien and will be deported to El Salvador. He will also be well
6 into his forties at the time of his release. It is submitted that both the length of the
7 sentence and his deportation auger in favor of the proposed sentence.

8 **D. The Sentencing Recommendations of the Parties Avoids Disparity with**
9 **Sentences Received or Contemplated in Pending Sentencings for Other**
10 **Co-Defendants**

11 The government's structuring of sentencing in this case is built around relative
12 culpability. Sentences received by Mr. Amaya's co-defendants have thus far not varied
13 from the government's sentencing recommendation. Arguably, in this case the
14 government's understanding of the defendant's relative culpability is likely the best
15 informed: the have sat through proffers with a number of cooperators, which is
16 information that the defense, probation, and the Court are not privy to. This
17 information has allowed them to assess where in the pecking order each defendant is,
18 what that defendant's actions were, and what they believe a reasonable sentence should
19 be.

20 Accordingly, Mr. Amaya's recommended sentence is, in the mind of the parties
21 and probation, consistent with his conduct relative to his co-defendants. To sentence
22 him otherwise would disrupt that analysis and create a disparity in sentencing.

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1 **IV. CONCLUSION**

2 For the reasons stated above, Mr. Amaya requests that the Court adopt the
3 sentence jointly recommended by the parties and probation.

4 Respectfully submitted,

5 DATED: February 14, 2023

By /s/ Peter L. Arian

6 PETER L. ARIAN

7 Attorney for Defendant EDWIN AMAYA
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